

On November 21, 2006 appellant, then a 43-year-old park ranger, filed an occupational disease claim alleging that he was exposed to a hostile work environment. He first realized his

disease or illness was caused or aggravated by his employment on October 23, 2006. Appellant stopped work on October 22, 2006.

In a November 9, 2006 disability certificate, Teresa S. Paine, PhD, a counselor, advised that appellant was under her care and would be unable to work until January 8, 2007. She indicated that appellant had major depression and anxiety disorder that prevented him from working. Appellant also submitted copies of nurses' reports.

In a statement received on February 1, 2007, appellant alleged that on October 19, 2006 he discovered that a global positioning system (GPS) unit was placed on his government vehicle. He contacted the West Virginia State Police on October 22, 2006 and, the next day, a state trooper determined that the employing establishment was tracking his movements as part of an internal investigation. On that date, appellant contacted Jennifer Noll, his supervisor, to inquire as to why his movements were being tracked. He informed her that he was concerned that his movements were being tracked to cause him harm. However, Ms. Noll did not appear to be concerned about the matter. Appellant noted that Duncan Holler, a second-line supervisor, and his supervisors, provided no information about the tracking device. He alleged that, since October 26, 2006, he had not heard from any of his managers and that he became sick since the discovery of the GPS unit. Appellant contended that the placement of the GPS unit on his work vehicle jeopardized his career, was illegal and was retaliatory for a grievance he had participated in and an unfair labor practice complaint in which he provided statements. He contended that management was trying to fire him. Appellant described several incidents pertaining to medical work excuses dated October 23 to November 9, 2006. He was subjected to repeated demands for medical documentation when he requested sick leave. When appellant called in sick on October 25, 2006, Ms. Noll told him to "be careful." He cited as harassment, several instances related to a missing vehicle key in August 2006 and management's requests that he surrender his government-issued laptop computer.

Appellant also submitted statements regarding medical leave and treatment, that the employing establishment delayed the filing of his claim until February 5, 2007; a memorandum pertaining to internal investigations; a position description; photographs of his vehicle with the GPS unit; and an October 22, 2006 statement from the police officer who responded to appellant's call concerning the GPS device. In a November 17, 2006 letter to Mr. Holler, he addressed the confiscation of his government-issued laptop computer and his patrol vehicle.

In a November 17, 2006 memorandum, Gary Hartley, chief ranger, noted that on November 15, 2006 appellant was informed by special agent Chris Schrader that he was the subject of an internal investigation related to the misuse of government equipment. Appellant was advised that, if he refused to cooperate, he would be subject to discipline. On January 4, 2007 Mr. Hartley advised appellant that he needed to obtain additional medical documentation from his physician regarding his current work status. In a January 19 2007 letter, he advised appellant that his law enforcement commission was being temporarily suspended based on medical documentation provided by his treating physician. Appellant was directed to surrender his law enforcement credentials and defensive equipment. He was advised that the suspension was temporary and he would be reinstated when his physician certified his readiness to resume law enforcement duties.

By letter dated March 9, 2007, the Office advised appellant and the employing establishment that additional evidence was needed.

Appellant provided statements dated March 5 to May 19, 2007 in which he reiterated his contentions that the GPS device constituted harassment and created a hostile work environment. He alleged that, because he made statements on behalf of a coworker, Jeron Jones, an African American who filed a discrimination claim, he became the target of the internal investigation. In seeking medical care as a result of his discovery of the GPS device, appellant was harassed by the employing establishment with repeated requests for medical documentation and threatened with being placed in an absent-without-leave status if the medical record was insufficient. He contended that he did not receive assistance in filing his workers' compensation claim and that the employing establishment delayed his claim. The Office received documentation concerning an Equal Employment Opportunity (EEO) complaint appellant filed on March 6, 2007 for discrimination.

Appellant provided witness statements from several rangers who alleged that the employing establishment practiced harassment, discrimination, intimidation and reprisal on a daily basis. In a March 9, 2007 statement, his wife described her experiences at the employing establishment and noted two instances of intimidation and favoritism by Mr. Holler. In a March 12, 2007 statement, Peggy Brown discussed grievances she and other rangers filed and the actions of management towards them after filing the grievances. In a March 7, 2007 statement, David Finch asserted that he was harassed and retaliated against by Mr. Holler and Mr. Hartley. In a March 1, 2007 statement, Audie Critchley described his experiences in attempting to obtain a hardship transfer. In a March 12, 2007 statement, Bryan Hunter alleged that he was subjected to retaliation and a hostile work environment for filing a grievance. In a May 1, 2006 statement, Jennifer Anderson described her experiences working with Mr. Holler. The Office also received a statement from Mr. Jones, a visitor use assistant, who noted his experience at the employing establishment. In December 12, 2006 and March 2, 2007 statements, Rob Turan noted that he supervised appellant from August 2000 until February 2006 and never had complaints about him and always gave him excellent evaluations. He questioned why the employing establishment would track appellant. Mr. Turan asserted that Mr. Holler was critical and demeaning toward appellant.

In correspondence dated December 5, 2006 to February 21, 2007, Richard Fitch, a union representative, advised that he currently represented four rangers, including appellant, regarding a number of grievances, unfair labor practice complaints, workers' compensation claims and an EEO complaint. He contended that the rangers were subjected to repeated acts of retaliation and issues of concern in their work conditions. Mr. Fitch stated that the employing establishment subjected appellant to an internal investigation and had his patrol vehicle, government-issued laptop, weapon and credentials were confiscated.

In an April 2, 2007 memorandum, Ms. Noll, appellant's supervisor, confirmed that there was an ongoing internal investigation related to appellant. Concerning the GPS device, she noted that appellant worked with the entire supervisory and management staff on October 19 through 21, 2006 and did not mention the device. Ms. Noll questioned why he contacted the State Police rather than anyone at the employing establishment. She denied that he informed her that he was "shaken up" or that he was concerned about his safety due to his movements being

tracked. Ms. Noll declined to respond to appellant's questions about the device as he was under an internal investigation. Regarding appellant's allegations since October 26, 2006, she explained that the assistant chief ranger and the special agent conducting the investigation informed her they would contact appellant. Ms. Noll noted that, when appellant called in sick, she assumed it was due to a head cold and upper respiratory infection as he had been very sick on October 21, 2006. Appellant did not inform her that he was ill due to finding the GPS device. Ms. Noll advised that appellant informed her on November 8, 2006 that his absence from work was due to concerns about the GPS device. She refuted appellant's allegations of harassment and contended that he was given the same opportunities as every other ranger. Ms. Noll explained that appellant was given special assignments, but they were made based on his knowledge of the park and not in an attempt to fire him. She was not aware that appellant was ever disciplined. Ms. Noll stated that appellant had less required of him than other rangers in the division, worked little overtime and did not take calls after work. She explained that appellant's only assignments in the past year were fire fighting, which he had requested. Ms. Noll denied any conflicts with appellant or his coworkers. Regarding appellant's leave requests, she stated that she had forgotten that she had signed appellant's annual leave slip for the period November 1 through 4, 2006. Ms. Noll contacted appellant on October 26, 2006, but subsequently discovered that his leave was preapproved. She confirmed that all leave requested by appellant was authorized. However, there were performance issues related to the use of government vehicles and property, which were being addressed by the special agent.

In a letter dated April 4, 2007, Deborah Darden, the deputy superintendent, confirmed that appellant became the focus of an internal investigation when his supervisor was unable to contact him by radio or cell phone on repeated occasions over several months. Appellant was nonresponsive or vague when questioned by his supervisor. Ms. Darden advised that a special agent was assigned to the case and installed a GPS tracking device on appellant's government vehicle. Because it was an internal affairs investigation, appellant's supervisor was not permitted to acknowledge any information about the GPS device. Ms. Darden indicated that when appellant inquired about the device he was directed to the special agent conducting the investigation. She noted that appellant did not exhibit any signs of stress prior to discovering that he was under investigation.

By decision dated August 3, 2007, the Office found that appellant failed to establish an emotional condition arising in the performance of duty. It found that appellant had not established any compensable factors of employment.

Appellant requested a hearing, which was held on June 16, 2008 and reiterated the factors that he believed contributed to his condition. In March 2007, he finally became aware of the internal investigation and stated that the removal of his law enforcement commission and the delay in reinstating it was deliberate harassment and intimidation by the employing establishment. In an October 11, 2007 report, Dr. Lawrence P. Saladino, a fitness-for-duty physician, advised that appellant did not meet employing establishment medical standards due to anxiety and depression that he had experienced since 2005. The Office received documents from the employing establishment noting that appellant was the subject of an internal investigation and that his law enforcement commission was suspended.

In a July 24, 2008 letter, Ms. Darden reiterated her comments and provided a copy of Ms. Noll's previously submitted statement. She stated that appellant was informed by his first and second-line supervisors, and later by a Federal Bureau of Investigation agent, to contact the special agent assigned to his investigation regarding the GPS device. However, appellant did not contact the agent. Ms. Darden noted that the investigation was stalled by appellant's extensive use of leave. In an undated response received by the Office on August 4, 2008, appellant repeated his allegations.

By decision dated August 29, 2008, the Office hearing representative affirmed the August 3, 2007 decision.

On September 13, 2008 appellant requested reconsideration. On September 15, 2008 he noted that he worked for the employing establishment for 15 years. Appellant alleged that he was subjected to "extreme reprisal, retaliation, harassment and illegal actions" after he participated in an EEO complaint and a union grievance. The Office received healthcare records and documents about post-traumatic stress disorder, which Dr. Paine diagnosed in a July 7, 2008 report and attributed to reprisals by appellant's supervisors. Appellant submitted e-mail correspondence dated January 28, 2005 to May 12, 2006 related to the satisfactory performance of his job duties. He included weekly activity reports for various rangers dated September 26 to October 2 and March 20 to 26.<sup>1</sup>

In an October 28, 2008 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence presented was repetitious and insufficient to warrant further review of the merits.

### **LEGAL PRECEDENT -- ISSUE 1**

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed

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<sup>1</sup> The year was not specified.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that he sustained an emotional condition as a result of actions of his supervisors. The Board must initially review whether the alleged incidents and conditions of employment are compensable employment factors under the terms of the Act.

Appellant contended that management engaged in an improper internal investigation by placing a GPS tracking device on his vehicle, refusing to answer his questions regarding the device, moving the keys to his government-issued vehicle and removing his government computer, laptop and law enforcement certification. The Board notes that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties that do not generally fall within the coverage of the Act.<sup>8</sup> Although the handling of disciplinary actions and internal investigations<sup>9</sup> are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>10</sup> The Board has held, however, that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether management erred or acted abusively, the Board has examined whether it acted reasonably.<sup>11</sup>

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<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>9</sup> *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

<sup>10</sup> *Id.*

<sup>11</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant has not submitted sufficient evidence to show that his managers acted unreasonably in the internal investigation. Although he submitted numerous documents including witness statements from his wife, his former supervisor, a union representative and coworkers, the evidence does not establish unreasonable action at the employing establishment specific to his assertions about the internal investigation. Appellant's supervisor, Ms. Noll, stated that appellant became the subject of an internal investigation related to the use of his government vehicle and government property after his supervisor was unable to contact him on repeated occasions. The witness statements did not provide any information pertaining to appellant's specific allegations, but generally referred to the coworkers' own experiences while at the employing establishment. Appellant has not shown that management's actions in connection with its investigation were unreasonable. In a November 17, 2006 memorandum, Mr. Harley, the chief ranger, confirmed that there was an internal investigation related to the misuse of government equipment. On April 4, 2007 Ms. Darden, the deputy superintendent, confirmed the internal investigation and noted that the special agent assigned to the case was the only person authorized to discuss the matter with appellant. On July 24, 2008 Ms. Darden noted that, when appellant presented questions about the investigation, he was referred to the special agent investigating the matter. However, appellant did not contact the special agent. Ms. Darden also indicated that the investigation had not concluded. The evidence does not establish that the employing establishment erred in these circumstances. Appellant presented no corroborating evidence to support that the employing establishment acted unreasonably in these matters. The employing establishment provided a reasonable explanation for its actions. Appellant has not established a compensable employment factor under the Act with respect to the investigation or placement of a GPS unit on his work truck.

Appellant also alleged that the employing establishment made repeated requests for documentation pertaining to his medical leave. However, the evidence does not support that management acted unreasonably. The processing of leave requests is an administrative matter.<sup>12</sup> Appellant has not submitted evidence to establish error or abuse towards him in this matter. Although he contends that he was contacted on various occasions by employing establishment personnel and subjected to repeated requests for medical documentation pertaining to his leave, he has not shown error or abuse. Ms. Noll alleged that she had contacted appellant at his home on October 26, 2006 because she had forgotten that she had signed his leave requests for the period from November 1 through 4, 2006. She also indicated that all leave requested by appellant was authorized. To the extent that appellant is alleging that the employing establishment improperly obtained his medical information, the Board notes that there is nothing in the record to support this allegation. Thus, he did not establish a compensable factor of employment in this regard.

Appellant alleged that he was harassed by his supervisors as they were on a "witch hunt" to get him. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere

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<sup>12</sup> See, e.g., *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004). See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005) (generally, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee).

perceptions of harassment or discrimination are not compensable under the Act.<sup>13</sup> In the present case, appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers with regard to his claimed incidents.<sup>14</sup> He alleged that he was harassed when the GPS device was placed on his government-issued vehicle, his managers refused to answer questions regarding the vehicle, moved his government-issued keys, removed his law enforcement certification and took considerable time to reinstate it, and retaliated against him for participating in an EEO complaint and filing a grievance. Although appellant filed grievances and an EEO complaint, this alone does not establish that the employing establishment harassed him. The Board notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>15</sup> The record does not reflect that any of the grievances or EEO complaints resulted in an adverse finding against the employing establishment that would support appellant's assertions. These documents are not sufficient to establish a compensable employment factor under the Act with respect to the claimed harassment. As noted, the statements of his coworkers generally described their perceptions of actions by certain managers towards them. They did not describe any specific actions alleged by appellant as being harassment or retaliation that contributed to his condition.<sup>16</sup> Mr. Finch indicated that he represented four individuals, including appellant, with regard to unfair labor practices, workers' compensation complaints and an EEO complaint. He noted that the details pertaining to the GPS device were related to an internal investigation. While appellant's law enforcement commission was suspended, his statement does not establish that any action taken by management was improper under the circumstance. Additionally, the employing establishment confirmed that appellant's law enforcement commission was suspended as a result of his healthcare provider's report that he was unable to work. Appellant was advised that his law enforcement commission would be reinstated when his physician found he was fit for duty. He has not shown that the employing establishment engaged in disparate treatment or harassment. Appellant did not establish a compensable employment factor.

Similarly, regarding appellant's allegations that the employing establishment retaliated against him by moving his car keys, the Board notes that, to the extent that he is alleging harassment, he has not shown how the movement of his keys would be harassment. There is insufficient evidence to show that such a matter rises to the level of a compensable employment factor under the circumstances presented. The employing establishment confirmed that the GPS device was placed on appellant's vehicle in relation to an internal investigation involving the misuse of government property. Perceptions and feelings alone are not compensable.<sup>17</sup> There is no evidence substantiating retaliation.

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<sup>13</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>14</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>15</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>16</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>17</sup> *C.F.*, 60 ECAB \_\_\_\_ (Docket No. 08-1102, issued October 10, 2008).



Appellant has not established a compensable employment factor under the Act. He has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of the Act,<sup>19</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>20</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

Appellant disagreed with the denial of his claim for an emotional condition and requested reconsideration on September 13, 2008. The underlying issue on reconsideration was whether appellant established any compensable factors of employment. However, he did not submit any relevant or pertinent new evidence on this issue.

In his September 15, 2008 statement, appellant reiterated his allegations. The Board notes that these arguments are not new and were previously considered by the Office. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>22</sup> Appellant also submitted reports and documents pertaining to post-traumatic stress disorder, which included a July 7, 2008

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<sup>18</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>19</sup> 5 U.S.C. § 8128(a).

<sup>20</sup> 20 C.F.R. § 10.606(b).

<sup>21</sup> *Id.* at § 10.608(b).

<sup>22</sup> *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

report from Dr. Paine. However, Dr. Paine merely reiterated allegations by appellant already considered by the Office. The medical evidence submitted by appellant is not relevant to the factual issue of whether he established a compensable employment factor.<sup>23</sup>

Appellant submitted correspondence from January 28, 2005 to May 12, 2006 related to the satisfactory performance of his job duties and weekly activity reports from the employing establishment for various rangers dated September 26 to October 2 and March 20 to 26. However, this evidence is not relevant to his claim as it does not address any particular findings relevant to his allegations of error or harassment.

Appellant did not provide any relevant and pertinent new evidence to establish that he sustained an emotional condition in the performance of duty. Consequently, the evidence submitted on reconsideration does not satisfy the third criterion for reopening a claim for merit review. Appellant has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. The Office properly denied his request for reconsideration.

On appeal, appellant alleged that the January 19, 2007 report of Mr. Hartley supported his claim for an emotional condition. As noted, Mr. Hartley advised appellant that his law enforcement commission was being suspended based on the report of his healthcare provider. Appellant failed to establish that this administrative action constituted a compensable employment factor.

### **CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition arising in the performance of duty. The Office properly refused to reopen his case for further review of the merits under 5 U.S.C. § 8128(a).

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<sup>23</sup> When a claimant has not established any compensable employment factors, it is not necessary to consider the medical evidence of record. *See supra* note 18.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 28 and August 29, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 10, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board